

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
UNITED STATES OF AMERICA,

-against-

GUILLERMO DE JESUS DIAZ
OSORIO,

MEMORANDUM AND ORDER

Case No. 1:13-cr-00426-FB-RER-1

Defendant.

-----x

Appearances:

For the United States:

BREON PEACE
United States Attorney
Eastern District of New York
By: HIRAL D. MEHTA
Assistant United States Attorney
271 Cadman Plaza East
Brooklyn, NY 11201

For the Defendant:

ALLEGRA W. GLASHAUSSER
Federal Defenders of New York
16th Floor
Brooklyn, NY 11201

BLOCK, Senior District Judge:

On June 29, 2022, Guillermo De Jesus Diaz Osorio filed his second motion seeking compassionate release under 18 U.S.C. 3582(c)(1)(A)(i). For the following reasons, Osorio-Diaz's motion is denied without prejudice to renew the motion should his circumstances change.

The Court denied Osorio-Diaz's first motion for compassionate release on August 17, 2021 because (i) he failed to attach proof of an administrative denial, and (ii) regardless, Osorio Diaz's pro se motion was based primarily on the risks posed

by the ongoing COVID-19 pandemic. These risks did not rise to the level of extraordinary and compelling in Osorio Diaz's case, particularly since he had been vaccinated against the virus at that time. The Court has carefully considered the parties' arguments and the controlling legal framework and is unpersuaded that Osorio Diaz has now presented "extraordinary and compelling reasons" justifying his release. *United States v. Brooker*, 976 F.3d 228, 237 (2d. Cir 2020). He will serve the remainder of his 130-month sentence and will be eligible for release in May 2024.

Osorio Diaz renews his argument about the COVID-19 pandemic, adding that it has made his sentence more punitive, that he is of advanced age, poor health, has served 75% of his sentence, and needs to be home with his family. Osorio Diaz's arguments, whether considered individually or in combination, do not rise to the level of extraordinary and compelling. The pandemic undoubtedly has made the circumstances of incarceration more punitive. *See, e.g., United States v. Rodriguez*, 492 F. Supp. 3d 306 (S.D.N.Y. 2020). However, this is a circumstance that has affected virtually every incarcerated individual, and in combination with the other factors presented by Osorio Diaz, does not rise to the level of extraordinary and compelling. Although the uncertainty of the pandemic caused Osorio Diaz emotional stress related to his family's well-being, this was unfortunately also a circumstance faced by practically every inmate. Also, at 63, Diaz Osorio has not yet reached the

age considered elderly by the Bureau of Prisons. The medical problems from which he suffers, namely obesity, prediabetes, hypertension, and hyperlipidemia, have not changed since his prior motion and do not together rise to the level of a compelling health problem warranting release.

Where a criminal defendant seeks “decreased punishment, he or she has the burden of showing the circumstances warrant that decrease.” *United States v. Butler*, 970 F.2d 1017, 1026 (2d Cir. 1992). Here, Osorio Diaz has failed to meet his burden of establishing “extraordinary and compelling” circumstances. *Brooker*, 976 F.3d at 237.

CONCLUSION

For the foregoing reasons, the defendant’s motion for compassionate release is DENIED.

SO ORDERED.

/S/ Frederic Block
FREDERIC BLOCK
Senior United States District Judge

Brooklyn, New York
October 11, 2022